IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6409/2005
(Gumana Ram Vs. Rajasthan State Road Transport Corporation & Anr.)

Date of Order : 18/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Bharat Devasi for the petitioner.
Mr. Anil Bachhawat for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order Annex.3 dated 3.4.2005 and seeks to quash the said order as also seeks a direction to the respondents to refund the amount of Rs. 7000/- recovered from the petitioner in pursuance of the order Annex.3.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioner that a sum of Rs. 7000/- has been recovered from the petitioner in violation of the Rajasthan State Road Transport Workers & Work Shop Employees Standing Orders, 1965 (for short 'the Standing Orders of 1965 hereinafter). He further contended that

the penalties have been provided under Condition No.36 of the said Standing Orders of 1965. Condition No.36 reads as under:-

> "36. One or more of the following penalties may, for good and sufficient reasons, be imposed on a worker by a competent authority; penalties from (v) to (viii) shall be appealable-
>
> (i)Censure:-Three censures in a period of one year will involve withholding of one increment.
>
> (ii)Withholding of increments or promotion.
>
> (iii)Recovery from pay/wages of the whole or part of any pecuniary loss caused to the employer by negligence or breach of any law.
>
> (iv)Fine upto 2% of worker's wages.
>
> (v)Forfeiture of wages during the period or of suspension.
>
> (vi)Reduction to a lower post or grade.
>
> (vii)Termination of service, which shall not be a disqualification for future employment.
>
> (viii)Dismissal from service which shall be disqualification for future employment."

The deduction from wages is provided under Condition No. 37 of Standing Orders of 1965 which reads as under :-

> "37. Deductions from the wages of a worker shall be of the following kinds duly approved by Chief Inspector of Factories under the Payment of Wages Act, 1936 only-
>
> (i)Fines.
>
> (ii)Deductions for absence from duty.
>
> (iii)Deductions for damage to or loss of property expressly entrusted to the employee for custody or

for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default.

(iv)Deductions for house accommodation supplied by the Corporation

(v)Deduction for any amenities and services supplied by the Corporation.

(vi)Deductions of income tax payable by the worker.

(vii)Deductions for recovery of advances or for adjustment of overpayment of wages.

(viii)Deductions required to be made by the order of court or any other authority competent to make such order under any law for the time being in force.

(ix)Deductions for subscription to or for repayment of advances from the Provident Fund Scheme.

(x)Any other deduction which is obligatory under any law or Act."

According to learned counsel for the petitioner, the recovery from the pay/wages of the whole or part of any pecuniary loss caused to the employer by negligence or breach of any law, can be made under Clause (iii) of Condition No.37 of the Standing Orders of 1965 and except this, there is no provision which empowers the respondents to effect recovery from the pay/wages of the petitioner.

Learned counsel appearing for the respondents failed

to show any provision under which such a recovery can be made from the pay/wages of the employees by the employer respondent. However, he submits that the petitioner is a driver appointed by the respondents and on 22.1.2003 the petitioner was the driver on the bus owned by the respondent plying from Ahmedabad to Phalodi and one passenger Heeraram who was travelling from Ahmedabad to Sanderav in the bus driven by the petitioner got down at Mehsana for urination, by the time, the petitioner started the bus and the passenger could not catch the bus and his luggage in a Attache remained in the bus. The allegation against the present petitioner is that on reaching Phalodi, the attache belonging to the passenger Heeraram was taken away by him instead of depositing with the RSRTC Depot, Phalodi which was subsequently revealed when Heeraram made a claim with regard to his attache containing Cash of Rs. 6000/- and clothes. An inqiury was held and on inquiry, the petitioner was found guilty. However, keeping in view the prestige of the respondent, a sum of Rs. 7000/- was paid to the passenger Heeraram in lieu of his attache, cash and certain clothes in the said attache and that amount was to be recovered from the present petitioner because the loss has been caused to the respondent employer by the negligent act of the petitioner and therefore, the respondents have rightly recovered the amount of the loss caused to them.

Learned counsel for the petitioner submits that passenger Heeraram filed a complaint before the District Consumer Redressal Forum, Jodhpur and that complaint has been dismissed by order Annex.5 dated 26.10.2004 and in the departmental inquiry, the petitioner has produced the evidence, and according to the petitioner, the attache in question was claimed by one BSF personnel who was travelling in the bus and the petitioner under the bonafide belief that the attache belongs to him as except that BSF Personnel no one claimed the attache, allowed the BSF personnel to take the attache against a receipt which the petitioner has placed before the inquiry officer and before this Court also and therefore, it is not the petitioner who was entrusted with the attache of passenger Heeraram. The passenger at his own, placed the attache in the bus and it was claimed by passenger travelling in the bus being BSF personnel and in good faith, the attache has been handed over to him believing that person to be the owner of the said attache and took a receipt of the same. The statement of the conductor of the bus namely Karansingh before the Consumer Forum and the affidavit filed by him are contradictory. In the affidavit, he has not stated that the said attache was taken away by the petitioner. He also admitted that there was no information that any of the passengers travelling in the bus left the attache in the

bus on the relevant day. Be that as it may.

The respondents have filed a reply to the complaint filed by passenger Heeraram before the District Consumer Redressal Forum, Jodhpur wherein it has been specifically denied that the petitioner has left passenger Heeraram at Mehsana Station intentionally and took way his attache. It has also been denied by the respondents in the reply to the complaint before the Consumer Forum that passenger Heeraram has suffered loss of money and other articles kept in the attache. Therefore, according to learned counsel for the petitioner, the petitioner has been penalized by deducting a sum of Rs. 7000/- from his salary, without there being any basis.

Keeping in view the reply of the respondents filed before the Consumer Forum and the contradictory statement of conductor Karansingh who was said to be the conductor of the bus at the relevant time and the fact that the alleged attache whether it belongs to passenger Heeraram or BSF personnel, was taken by the BSF Personnel against a receipt filed along with the Explanation Annex.1, it cannot be said that the petitioner was negligent in misplacement of the attache of the alleged passenger. Even otherwise, there being no provision to recover from the pay/ wages of the petitioner whole or any part of any

pecuniary loss caused to the employer unless it is established that such pecuniary loss has been caused to the employer by the negligence or breach of any law. There being no such foundation, therefore, the order impugned Annex.3 dated 3.4.2005 and the recovery made thereunder cannot be sustained and is liable to be quashed.

In the result, the writ petition is allowed. The Order Annex.3 dated 3.4.2005 is quashed and the amount recovered from the petitioner in pursuance of the order Annex.3 be refunded to the petitioner within three months from today. Stay petition also stands disposed of. There shall be no order as to costs.

(H.R.PANWAR),J.

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